

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

JUL 11 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Access Charge Reform)	CC Docket No. 96-262
)	
Price Cap Performance Review for Local Exchange Carriers)	CC Docket No. 94-1
)	
Transport Rate Structure and Pricing)	CC Docket No. 91-213
)	
Usage of the Public Switched Network by Information Service and Internet Access Providers)	CC Docket No. 96-263
)	

**PETITION FOR PARTIAL RECONSIDERATION
ON BEHALF OF AD HOC TELECOMMUNICATIONS USERS COMMITTEE,
FIRST DATA CORPORATION, BANKERS CLEARING HOUSE,
THE NEW YORK CLEARING HOUSE ASSOCIATION, MASTERCARD
INTERNATIONAL INCORPORATED AND VISA, U.S.A., INC.**

The Ad Hoc Telecommunications Users Committee ("Ad Hoc"),
First Data Corporation, Bankers Clearing House, the New York Clearing House
Association, MasterCard International Incorporated and VISA, U.S.A., Inc., (the
latter four referred to herein as the Financial Service Providers and all six parties
collectively referred to herein as the "User Parties") hereby petition the
Commission to reconsider that part of the *Access Order*¹ which allows local

¹ Access Charge Reform, *First Report and Order*, 62 Fed. Reg. 31868 (June 11, 1997)
("Access Order").

exchange carriers (LECs) to implement call setup charges beginning on July 1, 1998. The User Parties request that the Commission extend the one year transition period for an additional two years.²

BACKGROUND

In December 1996, the Commission released a Notice of Proposed Rulemaking³ ("NPRM") in the above-captioned proceeding proposing major reform of the Commission's access charge rules. Among the issues on which the NPRM sought comment is the question of whether incumbent local exchange carriers ("ILECs") should be allowed or required to levy call setup charges separately from local switching charges.⁴ The FCC noted that although it had previously rejected ILEC petitions for waiver of Part 69 for the purpose of imposing a call-setup charge, it desired comment on whether such charges would be appropriate or necessary as part of the comprehensive reform of its access charge rules.⁵ Numerous parties filed comments on this issue, including the User Parties.⁶ The User Parties also made several *ex parte* presentations

² As set forth below, the Commission delayed the imposition of call setup charges until July 1, 1998. The User Parties request that the Commission extend this moratorium until July 1, 2000.

³ Access Charge Reform, *NPRM*, 11 FCC Rcd. 21354 (Dec. 24, 1996) ("*Access NPRM*").

⁴ *Id.*, ¶ 76.

⁵ *Id.*

⁶ Comments of Ad Hoc, to NPRM in CC Dkt. 96-262 (Jan. 29, 1997) ("*Ad Hoc Comments*"). Comments of Financial Service Providers, to NPRM in CC Dkt. 96-262 (Jan. 29, 1997) ("*Financial Service Providers Comments*"). Reply Comments of Ad Hoc, to NPRM in CC Dkt. 96-262 (Feb. 14, 1997). Reply Comments of Financial Service Providers, to NPRM in CC Dkt. 96-262 (Feb. 14, 1997).

regarding this issue.⁷

The FCC's *Access Order* was released on May 16, 1997 and published in the Federal Register on June 11, 1997.⁸ In the *Access Order*, the FCC determined that the record justified the establishment of Call Setup Charges and that Section 69.06 of the FCC's Rules should be amended to permit, but not require, price cap ILECs to establish a separate per-call setup charge on interexchange carriers ("IXCs") for all calls handed off to the IXC's point of presence.⁹ The FCC also concluded that the costs of call setup were not likely to be *de minimis* and that certain users needed time to adjust to the new rate structure, and thus prohibited ILECs from imposing per-call setup charges prior to July 1, 1998.¹⁰

ARGUMENT

I. THE RECORD JUSTIFIES AT LEAST A THREE YEAR MORATORIUM ON THE IMPOSITION OF CALL SETUP CHARGES.

The User Parties requested, both in their pleadings and in ex parte meetings with the Commission, that any imposition of call setup charges be phased in to avoid the crippling impact on key business sectors.¹¹ The User Parties pointed out that the imposition of a call setup charge could double the

⁷ See Letter from Laura McDonald, Counsel, Financial Service Providers, to William F. Caton, Acting Sec., FCC (Apr. 2, 1997) (CC Dkt. No. 96-262). Letter from James Blaszk, Counsel, Ad Hoc, to Sec. Caton (Apr. 4, 1997) (CC Dkt. Nos. 96-262, 94-1, 91-213, and 96-263).

⁸ 62 Fed. Reg. 31868.

⁹ *Access Order* at ¶¶ 138.

¹⁰ *Id.*, ¶¶ 137 and 143.

telecommunications costs of applications like credit card authorizations.¹² Ad Hoc pointed out that a sudden departure from the current rate structure could create substantial churn and rate shock, stating that significant segments of the national economy have priced their services based on signals that would become obsolete with the institution of call setup charges.¹³ Accordingly, if the Commission were to adopt an access service rate structure which included a call setup charge, the End User Parties requested a reasonable transition period to allow those businesses affected to reevaluate their plans and, if appropriate, move to alternate serving arrangements. The Financial Service Providers suggested that a period of 36 months was appropriate.¹⁴ No commenting party, of which the End Users are aware, objected to a transition period, or suggested that a three year transition period was unreasonable.¹⁵

Businesses who have traditionally used the network to place short duration calls need at least three years: (a.) to consider, and possibly migrate to, alternative communications arrangements and (b.) to renegotiate existing long term contracts with their customers. These latter contracts are based in large part on communications costs that reflect the prior access charge regime. The

¹¹ See, e.g., *Financial Service Providers' Comments* at 8, *Ad Hoc Comments* at 20 -22.

¹² These costs currently average about 1.5 cents per transaction.

¹³ *Ad Hoc Comments* at 19.

¹⁴ *Financial Service Providers' Comments* at 8.

¹⁵ Ameritech suggested that it needed no less than nine months lead time to smoothly implement a significantly modified rate structure, but did not separately address a call setup transition period.

prior access charge regime encouraged customers to maximize the use of the network through short duration calls. As a result, the transaction time for calls such as credit authorizations, dropped significantly.¹⁶ The imposition of call setup charges will dramatically affect the underlying economics of transactions processing.

If alternative communications can be implemented to avoid the financial penalties of call setup charges, two to three years will be needed to transition to alternative serving arrangements, i.e. off of the public switched network. Technologies must be evaluated, vendor proposals sought and considered, contracts negotiated and alternative serving arrangements (possibly including new customer premises equipment) implemented and tested. This process will easily take three years to complete.

Additional time is also necessary to allow affected users to reevaluate and reestablish contracts that are based on the prior access charge regime. Transaction processors, credit and charge card companies, banks and retail establishments throughout the world are parties to such contracts, the underlying economics of which are changed by the imposition of call setup charges. The pricing established in those contracts are based on the prior long-standing regime. Moreover, most of these contracts have terms of three years,

¹⁶ Between the costs associated with longer calls and the desire to shorten a customer's wait as his credit card authorization was checked, the time for credit card authorizations have dropped dramatically. It was not long ago that all calls were placed by the store clerk, now most are transmitted through a "swipe of the card." Average holding time for voice authorizations was 30 seconds, now the average time is around 9 - 11 seconds and it can be as low as 2.6 seconds when ISDN access is used. Ex Parte Presentation of the Financial Service Providers, April 1, 1997.

and cannot be easily modified under prevailing contract law.¹⁷ Modifying these contracts (if possible) or negotiating new contracts is time consuming and cannot be completed within one year, even if all the contracts expired prior to July 1, 1998, (which is not the case), particularly when the underlying economics of the relationships must be changed.¹⁸ At least three years is needed so that the majority of contracts can be reassessed and reestablished, at the same time that alternative telecommunications serving arrangements are being considered.

More than one year will be needed to evaluate communications strategies. After that, comes the daunting task of changing commercial relationships. The Commission's selection of a one year period unreasonably disregards these facts.

II. THE COMMISSION AND THE COURTS HAVE RECOGNIZED THE NEED FOR *REASONABLE* TRANSITION PERIODS

The Commission and the Courts have long recognized the need for a reasonable transition period to implement rate increases to avoid disruption of service and the other devastating effects of rate shock. In the *Access Order* itself, for example, the Commission determined that "because of the potential magnitude of the rate impact of [implementing a cost-based rate structure for

¹⁷ Only limited and highly unusual circumstances – circumstances that satisfy the "commercial impracticability test" – justify contract reformation. See E. Allan Farnsworth, *Farnsworth on Contracts* § 9.6, "The Doctrine of Impracticability" (1990).

¹⁸ The most reasonable assumption is that the terms of the above-described service contracts come to completion on a rolling basis, i.e., new contracts or contract extensions are negotiated on continuing basis. Many of these contracts will likely have terms that extend well beyond July 1, 1998.

tandem—switched transport] . . . a four-step implementation over a two-year period will minimize the risk of rate shock and [will] allow transport customers to adjust while we move . . . to cost-based transport rates”¹⁹ Other examples are found in recent Commission decisions. In the Commission’s Wireline CPE Detariffing Order, the Commission rejected an 18-month period of price predictability as inadequate and opted instead for a two year price predictability period for multi-line business equipment that had previously been leased from AT&T.²⁰ Similarly, in replacing access rates based on settlement agreements with a single, cost-based rate structure, the Commission adopted a plan to gradually equalize the settlement rates and full special access rates to avoid rate shock.²¹ Most recently, a Federal-State Joint Board recommended a transition period of 6 years for small, rural carriers affected by the changes in universal support mechanisms “to minimize any possible rate shock to customers.”²²

Given that the Commission determined that the costs of call setup are not *de minimis* and given the possibility that some carriers will try to establish

¹⁹ Access Order, ¶ 166.

²⁰ Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services, *Second Report and Order*, 98 FCC 2d 814 ¶¶ 22-25(1984), *aff’d.*, 100 FCC 2d 1290 (1985).

²¹ Investigation of Access and Divestiture Related Tariffs, *Report and Order*, 102 FCC 2d 1007, 1008 -1009, 1018 - 1028 (1985). This plan only allowed for a one year transition, but the one year transition did not occur until after the effective date of carriers' special access tariffs. *Id.* at ¶ 46.

²² Federal-State Joint Board, *Recommended Decision*, 12 FCC Rcd. 87, ¶ 356. The Joint Board concluded that rural carriers cannot respond to changing operating circumstances as quickly as large carriers, and thus recommended a three year freeze on high cost assistance based on historical per line amounts and then a three year transition period to go to support based on a proxy model. *Id.*

call setup charges in the range approved by the California Public Utilities Commission (1.438 cents per message),²³ imposing separate call setup charges will have a dramatic impact on high volume, short duration users. A recent Nilson Report indicates that there were in excess of 8.5 billion credit card and debit card transactions in 1996.²⁴ The number of these transactions is growing daily. The Commission's *Access Order* allows ILECs to recover call setup charges on all originating interstate calls that are handed off to the IXC's POP and on all terminating calls that are received from an IXC's POP.²⁵ That means at least one authorization call per transaction, or about 8.5 billion call setup charges. If carriers impose call setup charges in the range implemented in California, the communications cost of credit card and debit card transactions would increase by about \$122,000,000 per year based on 1996 transaction figures.²⁶ A one year transition period is simply inadequate to absorb or mitigate this impact.

A longer transition period is also warranted because the Commission's *Internet NOI* has direct implications for short duration data applications, the applications that could be hit the hardest by application of call

²³ Pacific Bell, Schedule Cal. P.U.C. No. 175-T, Sheet 226.

²⁴ The Nilson Report, HSN Consultants, Inc., Issue 639, at 6-7 (Mar. 1997).

²⁵ *Access Order*, ¶ 138.

²⁶ 8.5 billion transactions x 1.438 cents per transaction = \$122,230,000.

setup charges.²⁷ The circuit-switched public network is no more suitable for transaction processing than it is for other information service providers. Both are data communications applications, and the Commission already has determined that,

The [current] access charge system was designed for basic voice telephony provided over a circuit-switched network, and even when stripped of its current inefficiencies it may not be the most appropriate pricing structure for Internet and other information services.²⁸

Because of these considerations, the Commission concluded that ISPs should not be subject to the interstate access charge system.²⁹ The same considerations warrant at least a longer transition period for short call duration data applications.

²⁷ Usage of the Public Switched Network by Information Service and Internet Access Providers, *Notice of Inquiry*, 11 FCC Rcd. 21354 (Dec. 24, 1996).

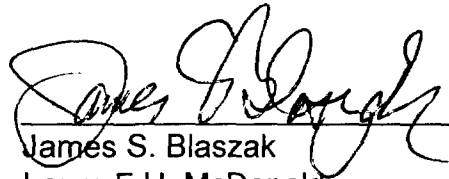
²⁸ *Access Order*, ¶ 347.

²⁹ *Id.*, ¶ 348.

CONCLUSION

Absent at a moratorium on call setup charges until July 1, 2000, a significant segment of the economy will be unable to rationally and efficiently respond to the imposition of call setup charges and rate shock will occur. Accordingly, the User Parties urge the Commission to reconsider its *Access Order* on this issue and to establish a three year moratorium on the imposition of call setup charges.

Respectfully submitted,



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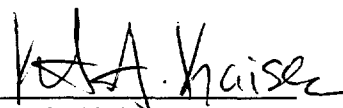
Dated: July 11, 1997

CERTIFICATE OF SERVICE

I, Kurt A. Kaiser, hereby certify that on this 11th day of July 1997, true and correct copies of the preceding Petition for Partial Reconsideration on behalf of Ad Hoc Telecommunications Users Committee, First Data Corporation, Bankers Clearing House, the New York Clearing House Association, MasterCard International Incorporated and VISA, U.S.A., Inc., in CC Docket Nos. 96-262, 94-1, 91-213 and 96-263 were served by hand delivery upon the following parties:

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